

CCRB INVESTIGATIVE RECOMMENDATION

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|---|---|-------------------------------------|--|---|--|
| Investigator: Cassandra Fendley | Team: Squad #5 | CCRB Case #: 201410021 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Saturday, 09/20/2014 2:30 AM | Location of Incident: 5th Avenue and 40th Street | Precinct: 72 | 18 Mo. SOL 3/20/2016 | EO SOL 3/20/2016 | |
| Date/Time CV Reported Tue, 09/30/2014 12:51 PM | CV Reported At: CCRB | How CV Reported: On-line website | Date/Time Received at CCRB Tue, 09/30/2014 12:53 PM | | |

| Complainant/Victim | Type | Home Address |
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| Subject Officer(s) | Shield | TaxID | Command |
|-------------------------|--------|--------|---------|
| 1. Officers | | | 072 PCT |
| 2. POM Pedro Vallecillo | 30714 | 940827 | 072 PCT |
| 3. POM Elvis Merizalde | 26862 | 946000 | 072 PCT |
| 4. POM Joseph Degen | 15228 | 951664 | QM SEC |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|------------------------------|-----------|--------|----------|
| 1. SGT Francisco Delossantos | 2178 | 928178 | 072 PCT |
| 2. POM Richard Rodriguez | 27733 | 946179 | 072 PCT |
| 3. POM Chang Chen | 02607 | 952576 | 072 PCT |
| 4. POM Eric Roome | 16591 | 953337 | 072 PCT |
| 5. POM Gary Bonavita | 22808 | 952480 | 072 PCT |
| 6. LT William Meyer | 00000 | 916221 | 072 PCT |
| 7. POM Dennis Hoe | 03915 | 949106 | 072 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|------------------------|---|-----------------------------|
| A.POM Elvis Merizalde | Abuse: PO Elvis Merizalde searched § 87(2)(b) | |
| B. Officers | Force: Officers used physical force against § 87(2)(b) | |
| C.POM Joseph Degen | Force: PO Joseph Degen used physical force against § 87(2)(b) | |
| D.POM Joseph Degen | Force: PO Joseph Degen used physical force against § 87(2)(b) | |
| E.POM Pedro Vallecillo | Force: PO Pedro Vallecillo used physical force against § 87(2)(b) | |
| F.POM Pedro Vallecillo | Force: PO Pedro Vallecillo struck § 87(2)(b) with a baton. | |
| G.POM Pedro Vallecillo | Discourtesy: PO Pedro Vallecillo spoke rudely to § 87(2)(b) | |

Case Summary

On September 20, 2015, this complaint was filed by § 87(2)(b) at the 72nd Precinct stationhouse. On September 30, 2014, this complaint was also filed by an unidentified individual via the CCRB's website after that individual watched the YouTube video of the incident § 87(2)(g).

On September 20, 2015, at approximately 2:30 a.m., PO Elvis Merizalde and PO Pedro Vallecillo, both of the 72nd Precinct, approached § 87(2)(b) and § 87(2)(b) in the vicinity of 40th Street and 5th Avenue in Brooklyn. PO Merizalde immediately reached into § 87(2)(b) pocket and retrieved a knife (**Allegation A**). § 87(2)(b) pushed PO Merizalde and called out for his mother, § 87(2)(b) and his father, § 87(2)(b) who were located inside of a nearby bar. PO Merizalde attempted to arrest § 87(2)(b) who resisted by elbowing PO Merizalde, but numerous people exited the nearby bar and interfered in the arrest. § 87(2)(b) and § 87(2)(b) both punched and kicked PO Merizalde. It was also alleged by officers that § 87(2)(b) and § 87(2)(b) aunt, § 87(2)(b) pulled at PO Merizalde's clothing during the attempted arrest. PO Vallecillo called for backup and numerous officers from the 72nd Precinct arrived. As additional officers responded, PO Merizalde accidentally let go of § 87(2)(b) and § 87(2)(b) fled the location. PO Richard Rodriguez, PO Chang Chen and other officers, all from the 72nd Precinct, apprehended § 87(2)(b) in the vicinity of 41st Street and 6th Avenue in Brooklyn. § 87(2)(b) received facial injuries as a result of being taken to the ground (**Allegation B**). § 87(2)(b) was subsequently arrested for § 87(2)(a) 160.50, § 87(2)(b) (encl. 7 AN-AP).

As § 87(2)(b) was being apprehended, all other civilians and officers remained in the vicinity of 40th Street and 5th Avenue in Brooklyn. The investigation determined that PO Gary Bonavita, Sgt. Frank Rodriguez, PO Vallecillo and other officers handcuffed and arrested § 87(2)(b) for § 87(2)(a) 160.50, § 87(2)(b) (encl. 7 BP-BS). PO Joseph Degen of the 72nd Precinct stationhouse apprehended § 87(2)(b) who was five months pregnant at the time of the incident, by taking her to the ground stomach first (**Allegation C**). PO Eric Roome of the 72nd Precinct approached to help handcuff § 87(2)(b). As PO Degen and PO Roome were handcuffing § 87(2)(b) approached PO Degen and PO Degen pushed § 87(2)(b) onto the ground (**Allegation D**). § 87(2)(b) was taken to the stationhouse and released with a § 87(2)(b) summons (encl. 7 BS) while § 87(2)(b) was not summonsed or arrested as a result of the incident.

About one minute after § 87(2)(b) was handcuffed, PO Vallecillo pushed § 87(2)(b) backwards approximately ten feet, until he hit the hood of a patrol vehicle (**Allegation E**). The investigation determined that PO Vallecillo, PO Roome and additional officers handcuffed § 87(2)(b). § 87(2)(b) alleged that during the handcuffing an officer determined by the investigation to be PO Vallecillo hit him with a baton and told him that he did not need to be "fucking" around in the streets (**Allegations F and G**). § 87(2)(b) was arrested for his § 87(2)(a) 160.50, § 87(2)(b) (encl. 7 BE-BG).

Mediation, Civil Proceedings and Criminal Histories

This case was not eligible for mediation because there were multiple arrests and there is a civil lawsuit regarding the matter. The civil lawsuit remains open (encl. 8 A-I). The 50-h Hearings were held on § 87(2)(b) (50h 1-296). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

This is the first CCRB complaint involving § 87(2)(b) and § 87(2)(b) (encl. 3 E; 3 G-I) § 87(2)(b). PO Merizalde has been a member of the service for seven years and there are no substantiated allegations against him. He does, however, have three previous allegations of search of person, in cases 200917281, 201012823 and 201012962, which were all closed as complainant/victim uncooperative (encl. 3 A-B). PO Degen has been a member of the service for three years and he has no substantiated allegations against him § 87(4-b) § 87(2)(g). (encl. 3 C). PO Degen has one previous allegation of force against him, in CCRB case 201301566, but it was closed as unsubstantiated § 87(2)(g). PO Vallecillo has been a member of the service for nine years and this is the first CCRB complaint against him (encl. 3 D).

Investigative Findings and Recommendations

Allegations Not Pleaded

§ 87(2)(g)

Identification of Subject Officers

§ 87(2)(b) said that one of the officers who handcuffed him used a baton against him and spoke rudely to him. § 87(2)(b) identified that officer as being one of the same officers who had initially stopped § 87(2)(b) (encl. 5 A-C). PO Merizalde and PO Vallecillo confirmed that they were the only two officers who stopped § 87(2)(b) (encl. 6 C-F; 6 K-M). Further, PO Vallecillo confirmed that he was the officer who handcuffed § 87(2)(b).

§ 87(2)(g)

Potential Issues

The victims in this case originally had § 87(2)(b) as their attorney. Between the dates of October 2, 2014, and October 7, 2014, three calls were placed and one letter was mailed to § 87(2)(b) regarding the case. However, the calls were not returned and the letter was not returned by the United States Postal Service (“USPS”).

On October 17, 2014, § 87(2)(b) became the new attorney for the case. A letter was mailed to him on October 17, 2014, which was not returned by the USPS, and a call was placed to him on November 3, 2014. Another call was placed to § 87(2)(b) on November 5, 2014, and he said that he was willing to consider that his clients make statements for the CCRB case after their court hearings, § 87(2)(b). On December 11, 2014, a call was placed to § 87(2)(b) and a voicemail message was left. § 87(2)(b) returned the call and said that he would consider allowing his clients to make statements regarding the incident after § 87(2)(b) gave birth to her child.

Between the dates of January 20, 2015, and January 30, 2015, two calls were placed to § 87(2)(b) and voicemail messages were left for him. On February 4, 2015, § 87(2)(b) said that he did not want his clients to make statements to the CCRB about the incident. He said that he

would consider providing his clients' medical records, but would not provide them at that time. § 87(2)(b) was contacted on March 10, 2015, and he confirmed that he still did not want his clients to provide statements and still did not want to provide the medical records. Due to the lack of results after extensive attempts, no medical documents were acquired and no statements were obtained from § 87(2)(b) or § 87(2)(b).

Allegation A – Abuse of Authority: PO Elvis Merizalde searched § 87(2)(b)

§ 87(2)(b) did not provide a statement to the CCRB regarding this incident. He also did not provide a 50-h Hearing statement regarding the incident. § 87(2)(b) said that when he exited the bar to see if § 87(2)(b) was okay, he saw officers around § 87(2)(b) holding a knife. § 87(2)(b) was subsequently arrested for § 87(2)(a) 160.50, § 87(2)(b).

PO Merizalde and PO Vallecillo both confirmed that they recognized § 87(2)(b) as a robbery recidivist in the area. They saw him standing on the corner of 40th Street and 5th Avenue with § 87(2)(b). Neither officer could describe what § 87(2)(b) and § 87(2)(b) was doing besides just standing on the corner of the street. They both decided to approach § 87(2)(b) in order to let him know that they were in the area. Upon PO Merizalde's approach of § 87(2)(b) he noticed a knife clipped to § 87(2)(b) front, right pants pocket. The knife clip was on the inside of § 87(2)(b) pocket and the entire knife was on the outside of his pocket. It was a folding knife and it was inside of a sheath case. PO Merizalde did not know how long the blade on the knife was and he did not know if the knife was a gravity knife, a pocket knife or a switchblade. PO Merizalde immediately reached over and grabbed the knife out of § 87(2)(b) pocket because the knife was in plain view. PO Vallecillo said that he did not see the knife on § 87(2)(b) and he did not see PO Merizalde recover the knife from him. PO Vallecillo explained that he was not paying attention because he was interaction with § 87(2)(b) at that time.

To perform a search, an officer must have probable cause. People v. DeBour, 40 N.Y.2d 201 (1976) (encl. 2 A-K). The detaining officer must have reason to believe that the object observed is indeed an illegal knife. People v. Cruz, A.D. 39 Misc. 3d 52 (App. Term, 2nd Dept. 2013) (encl. 2 L-N). Officers' knowledge of a person's criminal past is not tantamount to an indication of criminal activity. People v. Brown, A.D. 281 (1st Dep't. 2014) (encl. 2 O-S). N.Y.C. Admin Code § 10-133(c) prohibits any "person in a public place, street or park, to wear outside of his or her clothing or carry in open view any knife with an exposed or unexposed blade," unless the person is exempted by statute (encl. 1 AZ).

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Force: Officers used physical force against § 87(2)(b)

§ 87(2)(b) did not provide a statement to the CCRB. However, he did provide a brief statement about the incident at the stationhouse. The IAB log notes that PO Vallecillo injured § 87(2)(b) (encl. 4 A-B). However, the log is unclear whether § 87(2)(b) actually alleged that PO Vallecillo was the officer who injured him or if PO Vallecillo's name was just entered

taken to the ground. § 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(b) then fled the initial incident location. According to PO Rodriguez and PO Chen, § 87(2)(b) was also taken to the ground in the vicinity of 40th Street in between 5th Avenue and 6th Avenue (encl. 6 X-Z; 6 AN-AP). While no officer knew exactly which actions resulted in each of the injuries depicted on § 87(2)(b) face in his arrest photograph, PO Rodriguez said that he thought § 87(2)(b) fell face first onto the ground at the second incident location.

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Force: PO Joseph Degen used physical force against § 87(2)(b)

§ 87(2)(b) did not provide a statement regarding the incident to the CCRB. However, the force used against her is depicted on the video footage (See video 00:01 – 00:21). The video showed that § 87(2)(b) and PO Degen went to the ground and that § 87(2)(b) fell on her stomach as a result. § 87(2)(b) was five months pregnant at the time of the incident (encl. 1 A).

§ 87(2)(b) did provide a statement for her 50-h Hearing § 87(2)(a) Gen.Mun. §50-H(3)

PO Degen said that § 87(2)(b) had pulled on the back of his clothing while he was assisting in another arrest. He turned around towards § 87(2)(b) and told her she was under arrest. At that point, PO Degen was going to arrest § 87(2)(b) for interfering in an arrest. PO Degen said that § 87(2)(b) turned and attempted to walk away from him. The video footage shows § 87(2)(b) and PO Degen walking from the middle of the side of the car. PO Degen had a hold of § 87(2)(b)'s wrist, but he was holding on and allowing her to continue walking. § 87(2)(b) and PO Degen continue that way until they get to the front of the vehicle, at which time they walk the length of the vehicle's hood. § 87(2)(b) changed direction and as PO Degen still had a hold on her wrist, she again walked the length of the vehicle's hood. In his CCRB statement, PO Degen stated that § 87(2)(b) fell to the ground

and as a result of his holding onto her, he fell to the ground with her. PO Degen said that he did not take § 87(2)(b) to the ground and that he did not know she was pregnant at the time of the incident. He also noted that the incident location was a chaotic scene (encl. 6 AF-AH).

According to Patrol Guide Procedure 203-11, persons taken into custody shall be rear cuffed at the earliest opportunity to reduce the potential for resistance, which may cause injuries (encl. 2 T-U).

§ 87(2)(g)

§ 87(2)(g)

Allegation D – Force: PO Joseph Degen used physical force against § 87(2)(b)

§ 87(2)(b) appeared at the CCRB to provide a statement, but was not able to provide many details regarding the incident (encl. 5 H-I). She said that she approached PO Degen after he took § 87(2)(b) to the ground in order to tell him that § 87(2)(b) was pregnant. As she approached PO Degen, he pushed her. The video footage depicted § 87(2)(b) being pushed by PO Degen and then falling to the ground and rolling approximately ten to fifteen feet on the concrete (See video 00:21 – 00:31).

PO Degen said that as he was on the ground with another officer attempting to handcuff § 87(2)(b) § 87(2)(b) walked up to him and pulled on his arm and body. While that is not depicted on the video footage, there are also a couple of seconds where the camera was not focused on PO Degen around that time. PO Degen stated that was the time in which § 87(2)(b) pulled on him. PO Degen expressed that he feared for his safety and thought that § 87(2)(b) could have a weapon. When asked why he feared for his safety, PO Degen could not articulate anything beyond the fact that the incident location was chaotic. When asked why he thought § 87(2)(b) could have a weapon, PO Degen only said that it is always a possibility that someone can have a weapon and he did not know if § 87(2)(b) did or not. PO Degen stood up from where he was on the ground next to § 87(2)(b) and pushed § 87(2)(b) away in order to “neutralize the threat.” PO Degen did not recall where on § 87(2)(b)’s body he pushed and he explained that during the incident he did not even know that who he pushed was a female. PO Degen did not see if § 87(2)(b) fell as a result of the push. PO Degen did not see that occur because his attention went back to the handcuffing of § 87(2)(b). He was also trying to catch his breath. PO Degen did not know what occurred with § 87(2)(b) afterwards and never found out.

According to Patrol Guide Procedure 203-11, an officer must use minimum necessary force (encl. 2 T-U).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation E – Force: PO Pedro Vallecillo used physical force against § 87(2)(b)

§ 87(2)(b) said that after PO Degen pushed § 87(2)(b) to the ground, he went over to see if she was alright. He said that she could not walk and decided to approach PO Vallecillo to ask why the push of § 87(2)(b) occurred. § 87(2)(b) alleged that he was immediately pushed against a patrol vehicle in order to be handcuffed. § 87(2)(a) Gen.Mun. §50-H(3)

PO Vallecillo said that he saw § 87(2)(b) walking by him and recognized him as one of the civilians who had punched PO Merizalde while PO Merizalde was attempting to handcuff § 87(2)(b) at the beginning of the incident. PO Vallecillo told § 87(2)(b) to put his hands behind his back and immediately walked him to the hood of a patrol vehicle in order to handcuff him. PO Vallecillo said that § 87(2)(b) was not really struggling. The video footage showed that § 87(2)(b) was pushed backwards by PO Vallecillo at least ten feet before being pushed against the patrol vehicle (See video 01:45 – the end).

According to Patrol Guide Procedure 203-11, an officer must use minimum necessary force. Also, persons taken into custody shall be rear cuffed at the earliest opportunity to reduce the potential for resistance, which may cause injuries (encl. 2 T-U).

§ 87(2)(g)

§ 87(2)(g)

Allegation F – Force: PO Pedro Vallecillo used a baton against § 87(2)(b)

Allegation G – Discourtesy: PO Pedro Vallecillo spoke rudely to § 87(2)(b)

§ 87(2)(b) alleged that as he was being handcuffed against the patrol vehicle, PO Vallecillo hit him with a baton and told him that he did not need to be “fucking” around in the streets. However, § 87(2)(b) was not able to say where on his body he was hit by the baton. § 87(2)(b) did not go to the hospital on the date of the incident and stated it was because he did not have insurance. § 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(g)

PO Vallecillo and PO Roome confirmed that they were two of the officers who handcuffed § 87(2)(b) while he was against a patrol vehicle (encl. 6 AW-AX). However, both officers denied that PO Vallecillo used a baton or used any profanities. They said that no officer even had their baton or asp out during the incident. Further, PO Merizalde, Sgt. Delossantos, PO Rodriguez, PO Chen, PO Degen, PO Bonavita and Lt. Meyer all denied seeing an officer use a baton against any individual and all denied hearing any officer use any profanity (encl. 6 R-T; 6 BD-BE; 6 BI-BK).

The video footage cut off before § 87(2)(b) was handcuffed so there is no video of this portion of the incident. § 87(2)(b) arrest photograph does not depict any injuries to his face and there were no additional photographs of § 87(2)(b) provided. Further, there are no medical documents for § 87(2)(b) from the date of the incident.

§ 87(2)(g)

Pod: 5

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date